

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MAYOLO AGUILAR MUNOZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71460

Agency No. A75-709-084

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005**

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Mayolo Aguilar Munoz, a native and citizen of Mexico, petitions for review
of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral
argument. See Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") order of removal to the IJ to consider the merits of his untimely application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to remand. *Castillo-Perez v. INS*, 212 F.3d 518, 523 (9th Cir. 2000). We deny the petition for review.

The BIA acted within its discretion in denying Munoz's motion to remand, and properly dismissed his appeal. Even if ineffective assistance caused the late filing of Munoz's cancellation application, Munoz failed to establish he was prejudiced. *See Guzman v. INS*, 318 F.3d 911, 903 (9th Cir. 2003) (per curiam) (finding no prejudice caused by counsel's alleged ineffective assistance "given the strict standard for finding 'extreme' hardship" in a suspension of deportation case).

Petitioner's contention that the IJ had an obligation to raise sua sponte an ineffective assistance of counsel claim on his behalf likewise fails because petitioner cannot demonstrate prejudice. *See id.*

PETITION FOR REVIEW DENIED.